

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
)	No. 2:13-cr-00227-JFC-1
v.)	
)	
NICHOLAS TROMBETTA,)	
)	Judge Joy Flowers Conti
Defendant.)	

DEFENDANT NICHOLAS TROMBETTA’S RESPONSE TO APRIL 27, 2015 ORDER

In response to the Court’s April 27, 2015 Order directing Defendant Nicholas Trombetta (a) to propose a timeline for supplemental briefing on the common interest issue and (b) to set forth his position on whether the Motion to Strike [Docket No. 141] remains at issue, Trombetta hereby responds as follows:

A. Proposed Timeline

Trombetta respectfully suggests that the common interest issue would be most efficiently considered after resolution of the threshold attorney-client relationship issues that are the subject of this first phase of this Court’s consideration of Defendant Nicholas Trombetta’s Motion to Dismiss or Suppress Evidence Due to Government Misconduct (“Misconduct Motion”) [Docket No. 68]. If the Court wishes to consider the common interest issues during this first phase, Trombetta hereby submits the following timeline.

The government has already presented its arguments regarding the applicability of the common interest doctrine. It did so in its Proposed Findings of Fact and Conclusions of Law [Docket No. 135] at pp. 40-42, 61-62. It did so again in “Memorandum Reply to Documents 133 and 139” (“Government’s Reply”) [Docket No. 140] at pp. 12-18. The government’s position is that “the matter of common interest is ripe for resolution.” Govt Reply at 17. For the reasons stated in previous submissions, Trombetta has not yet presented his arguments on this issue.

Because (a) the government has already briefed the common interest issue and (b) Trombetta has the burden of proof on the common interest issue and should therefore have the final submission addressing the issue, the common interest issue would be fully briefed with a single additional submission from Trombetta focusing on that issue. Trombetta proposes that his submission be due two weeks from the date of the Court's order establishing a timeline. No further response from the government should follow.

B. Motion To Strike

The Government's Reply covered much more than just the common interest issue. As to all other issues (pp. 1-12, 18-22), it remains (a) an unauthorized sur-reply filed in contravention of this Court's order and (b) an improper attempt to have the last word on the threshold attorney-client relationship issue. Accordingly, the Motion to Strike remains at issue even if the Court accepts the timeline for supplemental briefing proposed above. Pages 1-12 and 18-22 of the Government's Reply should be stricken and the Court should disregard them. To consider them would reward the government for flouting this Court's order and attempting to obtain an unfair and unauthorized advantage.

Respectfully submitted,

s/ Robert A. Salerno
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CERTIFICATE OF SERVICE

I, Robert A. Salerno, counsel for Defendant Nicholas Trombetta, hereby certify that I served the foregoing by causing a copy to be electronically filed with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all parties of record.

s/ Robert A. Salerno
Robert A. Salerno
Counsel for Defendant Nicholas Trombetta

Dated: May 4, 2015